

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JASON WAITE**

Claimant

VS.

**CITY OF WICHITA**

Respondent,  
Self-Insured

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Docket No. 268,626

**ORDER**

Respondent appealed the August 9, 2002 Award entered by Administrative Law Judge Nelsonna Potts Barnes. At the parties' request, the Board cancelled the February 21, 2003 oral argument that had been scheduled, placing this claim on its summary calendar. February 21, 2003, is the date arguments were presented by the parties for purposes of K.S.A. 44-551(b)(1), as amended.

**APPEARANCES**

Kelly W. Johnston of Wichita, Kansas, appeared for claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for a November 27, 2000 accident and resulting right knee injury. The parties stipulated claimant's accident arose out of and in the course of employment with respondent. As a result of the accident, claimant underwent right knee surgery. The only question before the Judge was the extent of functional impairment that claimant had sustained due to the accident. The parties presented three functional impairment opinions to the Judge, who averaged the lowest (nine percent) with the highest (24 percent), and awarded claimant benefits for a 17 percent functional impairment to the right lower extremity.

Respondent contends Judge Barnes erred as the award for a 17 percent functional impairment to the right lower extremity is excessive. Respondent argues that Dr. Peter Bieri's 24 percent rating should be reduced by 12 percent as Dr. Bieri's latter rating purportedly does not follow the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.) (AMA Guides). Respondent requests the Board to find that claimant's functional impairment to the lower extremity is no greater than the 10 percent that was found by claimant's treating physician, Dr. John D. Osland.

Conversely, claimant contends the Board should affirm the Award. Claimant argues Dr. Bieri was the best qualified to rate claimant's injuries as the doctor (1) is certified by the American Academy of Disability Evaluating Physicians, (2) helped prepare the casebook that assists other doctors in understanding the *Guides* and is a contributing author of the *Guides* (5th ed.), (3) has considerable experience in using the *Guides*, and (4) has performed evaluations as a neutral examiner for the Division of Workers Compensation. Claimant argues that if the Board modifies the Award, the permanent disability benefits should be increased.

The only issue before the Board on this appeal is the percent of functional impairment that claimant sustained to his right leg as a result of the November 27, 2000 accident.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

1. On November 27, 2000, while working as a safety officer for the Wichita Airport Authority, claimant injured his right knee when he stepped off a fire truck while holding a five-gallon bucket of liquid.
2. Respondent provided claimant with medical treatment, which included a referral to board-certified orthopedic surgeon Dr. John D. Osland. On December 13, 2000, Dr. Osland operated on claimant's right knee. During surgery, the doctor discovered a relatively complex medial meniscus tear. Consequently, the doctor performed a partial medial meniscectomy removing approximately one-half of the meniscus. The doctor also reconstructed the anterior cruciate ligament using a section from claimant's patella tendon for a graft.
3. When testifying at the April 2002 regular hearing, claimant stated that he experienced right knee pain when he jogged, tightness in his knee when he kneeled and that his right leg would fatigue before his left leg. At the time of the hearing, claimant was taking over-the-counter medications such as Motrin and Ibuprofen for his symptoms.

4. Respondent presented the testimony of Dr. Osland. Dr. Osland is a board-certified orthopedic surgeon and is a fellow of the American College of Orthopedic Surgeons. The doctor last saw claimant on June 12, 2001, for purposes of rating claimant's permanent functional impairment. According to the doctor, under the *AMA Guides* (4th ed.) claimant sustained a two percent functional impairment to the right lower extremity for the partial medial meniscectomy, a six percent functional impairment to the lower extremity for the anterior cruciate ligament tear and a two percent impairment to the lower extremity for atrophy, all of which combined for a 10 percent functional impairment to the lower extremity.
5. Claimant presented the testimony of Dr. Peter Bieri, whom claimant's attorney hired to evaluate claimant for this claim. Dr. Bieri is board-certified by the American Academy of Disability Evaluating Physicians, which is the certifying authority recognized by the American Board of Medical Specialities. The doctor is also listed as an author and reviewer for the *AMA Guides* (5th ed.) as he contributed to its introduction, the section explaining the use of the *Guides* and the section dealing with evaluating the head and neck. But as respondent's counsel adroitly established, Dr. Bieri is neither an orthopedic surgeon nor does he focus his practice on the lower extremities.
6. Dr. Bieri examined claimant in November 2001 and determined claimant had sustained a two percent impairment to the right lower extremity due to the partial medial meniscectomy, a seven percent impairment to the lower extremity due to the anterior cruciate ligament repair, a 12 percent impairment to the lower extremity due to weakness, and a five percent impairment to the lower extremity due to patellofemoral pain, all of which combined for a 24 percent functional impairment to the right lower extremity. Dr. Bieri's testimony is persuasive that his rating conforms to the *AMA Guides* (4th ed.).
7. The third opinion of claimant's functional impairment comes from Dr. C. Reiff Brown, who was appointed by the Judge to evaluate claimant's injuries. Dr. Brown's letterhead identifies him as belonging to both the American Academy of Orthopedic Surgeons and the American Academy of Disability Evaluating Physicians. The doctor examined claimant in February 2002 and rated him as having a two percent impairment to the right lower extremity for the partial meniscectomy and a seven percent impairment to the lower extremity for the reconstructed anterior cruciate ligament and residual weakness, both of which combined for a nine percent functional impairment to the right lower extremity. The doctor noted that claimant did not have crepitus or pain with grinding of the patella against the femoral condyles.

8. The Judge determined claimant's functional impairment to the lower extremity fell somewhere between the nine percent provided by Dr. Brown and the 24 percent provided by Dr. Bieri. The Board agrees. Dr. Bieri's functional impairment opinion was credible, as were the opinions from Dr. Brown and Dr. Osland. Accordingly, the Board affirms the Judge's finding that claimant sustained a 17 percent functional impairment to the right lower extremity as a result of the November 27, 2000 accident.

**AWARD**

**WHEREFORE**, the Board affirms the August 9, 2002 Award entered by Judge Barnes.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Kelly W. Johnston, Attorney for Claimant  
Edward D. Heath, Jr., Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation